

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**MARTHA L. MCKENZIE**  
Claimant

VS.

**HALLMARK CARDS, INC.**  
Respondent  
Self-Insured

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Docket No. 1,019,008

**ORDER**

Respondent appeals the December 2, 2004 Nunc Pro Tunc Order For Medical Treatment issued by Administrative Law Judge Brad E. Avery, modifying the November 19, 2004 Order For Medical Treatment. Claimant was awarded medical treatment with Dr. William Bailey after the Administrative Law Judge (ALJ) determined that claimant suffered accidental injury, the accidental injury arose out of and in the course of employment and notice of the accident was given within 10 days.

**ISSUES**

Respondent raises the following issues on appeal:

- “1. Whether claimant met with personal injury by accident arising out of and in the course of her employment with respondent.
- “2. Whether the claimant gave notice, made written claim or filed an Application for Hearing within a timely fashion from the date of accident, if it occurred.
- “3. Whether there is any evidence that medical treatment is reasonable and necessary at this time.”<sup>1</sup>

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<sup>1</sup> Application for Appeals Board Review and Docketing Statement dated December 3, 2004.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Based upon the evidence presented and for the purposes of preliminary hearing, the Appeals Board (Board) finds the Order of the Administrative Law Judge should be affirmed.

Claimant alleges accidental injury through a series of injuries to her low back culminating on August 30, 2004, her last day worked with respondent. It was acknowledged in the record at the time of preliminary hearing that claimant also has a claim against respondent for her upper extremities. However, at the preliminary hearing, the ALJ determined that the issues dealing with the low back and the bilateral arm injuries are separate and distinct and it would be in the parties' best interests to bifurcate the low back and bilateral arm cases. The ALJ, therefore, ruled that Docket No. 1,019,008 deals exclusively with the low back claim. Claimant was instructed to file a secondary claim for the injuries suffered to her upper extremities. Therefore, this Order deals only with claimant's allegations of an injury to her low back through a series of accidents through August 30, 2004.

Claimant testified that the work she was performing for respondent aggravated her condition and that over the last six months to a year, her condition had intensified. Claimant acknowledged that she has had ongoing back problems since as early as 1998, with medical treatment being provided through a chiropractor as early as 1998. However, claimant's testimony, that her condition has intensified over the last six months to a year, is uncontradicted. Uncontradicted evidence which is not improbable or unreasonable may not be disregarded unless it is shown to be untrustworthy.<sup>2</sup> The Board, therefore, affirms the ALJ's determination that claimant has proven that she suffered accidental injury arising out of and in the course of her employment.

Respondent also argues that claimant failed to give timely notice, file timely written claim or file an application for hearing in a timely fashion. As the Order in Docket No. 1,019,008 was stipulated to deal only with claimant's back, and as claimant alleges injuries occurring through August 30, 2004, the Board concludes that respondent's defenses in this matter are disingenuous.

Claimant testified that she discussed her ongoing back problems and the fact that her job was aggravating those problems with her immediate supervisor, Gene Petrie. A communications record, marked as Claimant's Exhibit 1, which was apparently completed by Mr. Petrie, was placed into the record showing that claimant discussed her back

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<sup>2</sup> *Anderson v. Kinsley Sand & Gravel, Inc.*, 221 Kan. 191, 558 P.2d 146 (1976).

problems as early as August 26, 2004, and again on Monday, August 30, 2004, her last day with respondent. In that communications record, Mr. Petrie noted that claimant discussed the ongoing back problems and the fact that claimant felt it was related to the work station, with claimant determining that she wanted to report the accident as a work-related injury. K.S.A. 44-520 requires that notice be provided to a respondent within 10 days of the date of accident, stating "the time and place and particulars thereof." Respondent provides no evidence to contradict claimant's testimony that she contacted Mr. Petrie and, in fact, respondent's own communications record supports claimant's claim of a conversation with her supervisor regarding a work-related injury.

Additionally, respondent contends that claimant has not satisfied the requirements of K.S.A. 44-520a, which requires written claim be served upon the employer within 200 days of the date of accident. In this instance, claimant's E-1 Application for Hearing was filed with the Division of Workers Compensation on September 13, 2004, 13 days after claimant's termination of employment and well within the 200 days required by K.S.A. 44-520a. Claimant's employer was listed on the Application for Hearing.

Finally, respondent contends that claimant failed to file application for hearing within a timely fashion from the date of accident. K.S.A. 44-534(b) requires that an application for hearing be on file in the office of the Director within three years of the date of accident or within two years of the date of the last payment of compensation. Again, since claimant's allegations of accidental injury and her testimony support a finding that claimant suffered injury through her last day worked, August 30, 2004, and claimant's E-1 was filed on September 13, 2004, the Board finds respondent's dispute of this issue to be bogus. The evidence provided by respondent to counteract claimant's allegations in this case verge on nonexistent. The Board finds respondent's defenses in this appeal stray dangerously close to frivolous.

The Board finds that the Order of the ALJ granting claimant benefits after having found that claimant suffered accidental injury arising out of and in the course of employment and having served timely notice upon respondent should be, and is hereby, affirmed.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Nunc Pro Tunc Order For Medical Treatment of Administrative Law Judge Brad E. Avery dated December 2, 2004, should be, and is hereby, affirmed.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of March 2005.

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BOARD MEMBER

c: James L. Wisler, Attorney for Claimant  
John David Jurcyk, Attorney for Respondent  
Brad E. Avery, Administrative Law Judge  
Paula S. Greathouse, Workers Compensation Director